

[ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 16, 2024]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TIKTOK INC. and BYTEDANCE LTD.,

Petitioners,

v.

MERRICK B. GARLAND, in his official
capacity as Attorney General of the
United States,

Respondent.

No. 24-1113 (consol.
with Nos. 24-1130, 24-
1183)

NOTICE REGARDING HEARING TRANSCRIPT

This case concerns the constitutionality of provisions of the Protecting Americans from Foreign Adversary Controlled Applications Act, Pub. L. No. 118-50, div. H, 138 Stat. 955 (2024). In connection with consideration of the Act, Congress conducted one classified hearing and received several classified briefings from the Executive Branch.

On July 11, the Department of Justice obtained from Congress the transcript of the one classified hearing, a March 7, 2024, executive session of the House Committee on Energy and Commerce. The Department is not citing to or relying on this transcript in the brief filed today. Rather, it is relying on classified

declarations of employees of the Office of the Director of National Intelligence, the Department of Justice, and the Federal Bureau of Investigation.

Nonetheless, for purposes of transparency and completeness, the appropriate officials in the intelligence community will review the transcript to identify any unclassified information therein that could be filed on the public docket. We will make best efforts to file, on the public docket, a redacted version of the transcript with all classified information removed, in advance of Petitioners' reply brief, which is currently due August 15, 2024.

As to the classified portions of the transcript, we are unaware of any past circumstance in which classified testimony by the intelligence community at a classified hearing before Congress has been shared with a court for consideration in connection with civil litigation. This reflects the need to protect sensitive interbranch discussion of matters of national security. The declarations the Department has filed today from employees of the Office of the Director of National Intelligence and the Federal Bureau of Investigation are based on the same body of intelligence that was relied on in briefing the Congress, and the key judgments in the intelligence community's assessment were conveyed to Congress.

See Blackburn Decl. ¶ 6.

Under the unusual circumstances of this case, however, the Department of Justice plans to provide to the Court classified portions of the transcript that

include the statements of Members of Congress and the testimony of the witness from the Department of Justice. The appropriate officials will be reviewing the transcript to apply the appropriate portion markings and take any other steps necessary to provide a classified version of those portions of the transcript, *ex parte* and *in camera*, as expeditiously as possible. We will make best efforts to provide that version to the Court in advance of the September 16, 2024 oral argument.

The transcript is more than 170 pages long, is highly classified and does not currently contain portion markings to identify the particular portions of the transcript that are classified or the corresponding level of classification for each. The review process that will be undertaken by the Intelligence Community will require the involvement of multiple agencies and is likely to be extensive, given that it will variously require officials to identify relevant source materials for classified information in the transcript, consult with numerous subject matter experts regarding the information discussed, provide agencies that may have equities in the information at issue an opportunity to review, and obtain any special approvals that may be necessary to enable submission of this classified material in court.

A transcript was also prepared for one of the classified briefings, a briefing before the Senate Select Committee on Intelligence and the Senate Committee on

Commerce, Science, and Transportation on March 20, 2024. Although a limited number of Department of Justice personnel were authorized to review the transcript of the Senate briefing, we understand that a full Senate vote would be required before the transcript can be released to the Executive Branch, submitted to the Court, or characterized in filings.

Respectfully submitted,

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